

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ROOSEVELT DEWAYNE ROGERS,

Plaintiff,

v.

MINNESOTA DEPARTMENT OF
CORRECTIONS,

Defendant.

Case No. 17-cv-0937 (SRN/HB)

REPORT AND RECOMMENDATION

Plaintiff Roosevelt Dewayne Rogers commenced this action by filing a complaint under 42 U.S.C. § 1983 alleging that the Minnesota Correctional Facility at Lino Lakes made him “wait long periods of time to use the restrooms.” (Compl. at 4 [ECF No. 1].) Rogers did not pay the required filing fee for this case, but instead filed an Application to Proceed in District Court without Prepaying Fees or Costs (“IFP Application”) [ECF No. 2]. In an order dated May 4, 2017, this Court ordered Rogers to file an amended complaint if he intended to proceed with his case because the only defendant he had identified was immune from suit in federal court. (Order at 2 [ECF No. 3].) Rogers was given thirty days from the date of the order (until June 4, 2017) to file an amended complaint, and he was warned that failure to comply would result in a finding that he had abandoned the action and a recommendation that the case be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

That deadline has now passed, and Rogers has neither amended his complaint nor sought an extension of time to do so. In fact, Rogers has not communicated with the Court about this case at all since he commenced this action. Accordingly, this Court now recommends that this

action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

Accordingly, based upon the foregoing and all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b).

Dated: June 12, 2017

s/ Hildy Bowbeer
HILDY BOWBEER
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).